

**§ 42.410 Arbitration.**

(a) Parties may resort to binding arbitration to determine any issue. The Office is not a party to the arbitration. The Board is not bound by, and may independently determine, any question of patentability.

(b) The Board will not set a time for, or otherwise modify the proceeding for, an arbitration unless:

(1) It is to be conducted according to Title 9 of the United States Code;

(2) The parties notify the Board in writing of their intention to arbitrate;

(3) The agreement to arbitrate:

(i) Is in writing;

(ii) Specifies the issues to be arbitrated;

(iii) Names the arbitrator, or provides a date not more than 30 days after the execution of the agreement for the selection of the arbitrator;

(iv) Provides that the arbitrator's award shall be binding on the parties and that judgment thereon can be entered by the Board;

(v) Provides that a copy of the agreement is filed within 20 days after its execution; and

(vi) Provides that the arbitration is completed within the time the Board sets.

(c) The parties are solely responsible for the selection of the arbitrator and the conduct of the arbitration.

(d) The Board may determine issues the arbitration does not resolve.

(e) The Board will not consider the arbitration award unless it:

(1) Is binding on the parties;

(2) Is in writing;

(3) States in a clear and definite manner each issue arbitrated and the disposition of each issue; and

(4) Is filed within 20 days of the date of the award.

(f) Once the award is filed, the parties to the award may not take actions inconsistent with the award. If the award is dispositive of the contested subject matter for a party, the Board may enter judgment as to that party.

**§ 42.411 Common interests in the invention.**

The Board may decline to institute, or if already instituted the Board may issue judgment in, a derivation proceeding between an application and a

patent or another application that are commonly owned.

**§ 42.412 Public availability of Board records.**

(a) *Publication.* (1) *Generally.* Any Board decision is available for public inspection without a party's permission if rendered in a file open to the public pursuant to § 1.11 of this chapter or in an application that has been published in accordance with §§ 1.211 to 1.221 of this chapter. The Office may independently publish any Board decision that is available for public inspection.

(2) *Determination of special circumstances.* Any Board decision not publishable under paragraph (a)(1) of this section may be published or made available for public inspection if the Director believes that special circumstances warrant publication and a party does not petition within two months after being notified of the intention to make the decision public, objecting in writing on the ground that the decision discloses the objecting party's trade secret or other confidential information and stating with specificity that such information is not otherwise publicly available.

(b) *Record of proceeding.* (1) The record of a Board proceeding is available to the public, unless a patent application not otherwise available to the public is involved.

(2) Notwithstanding paragraph (b)(1) of this section, after a final Board decision in or judgment in a Board proceeding, the record of the Board proceeding will be made available to the public if any involved file is or becomes open to the public under § 1.11 of this chapter or an involved application is or becomes published under §§ 1.211 to 1.221 of this chapter.

**PART 90—JUDICIAL REVIEW OF PATENT TRIAL AND APPEAL BOARD DECISIONS**

Sec.

90.1 Scope.

90.2 Notice; service.

90.3 Time for appeal or civil action.

AUTHORITY: 35 U.S.C. 2(b)(2).

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